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MAY 28 2003

OFFICE OF PETITIONS

In re Application of :
Maria Isabel Gonzalez et al :
Application No. 09/759,777 :
Filed: January 12, 2001 :
Attorney Docket No. 5771-P1-01-BD :

ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 21, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of the prior-filed applications, and on the petition 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e), for the benefit of the prior-filed provisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR 1.78(a)(3) and under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the prior-filed applications.

The instant pending nonprovisional application was filed on January 12, 2001. While a reference to the prior-filed applications was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the oath or declaration.

The current procedure where a claim for priority under 37 CFR 1.78(a)(2) and 37 CFR 1.78(a)(5) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(2) and 37 CFR 1.78(a)(5). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed applications in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6).¹ In the instant case, the Office noted the claim for priority of the prior-filed applications in the oath or declaration, as shown by its inclusion on the filing receipt.

¹ Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

In view of the above, the \$1,300 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Karen Creasy at (703)305-8859. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center AU 1617 for consideration by the examiner of the claim under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(3) and the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed applications.



Frances Hicks

Lead Petitions Examiner
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cc:

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